IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.4.2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
and
THE HONOURABLE MR.JUSTICE J.A.K.SAMPATHKUMAR

Habeas Corpus Petition No.110 of 2007

J.Geetha .. Petitioner

..vs..

1.State of Tamil Nadu
rep. by its Secretary
Public (Law & Order-G)Department
Secretariat
Chennai 600 009

2.The Commissioner of Police
Greater Chennai
Egmore
Chennai 600 006 .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus calling for the records from the file of the 2nd respondent relating to the detention order made in No.2/NSA/2006 dated 16.12.2006, set aside the same and produce the detenu before this Hon'ble Court and set him at liberty.

For petitioner : Mr.Su.Srinivasan
For respondents : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.K.MISRA,J.)

Heard the learned counsel appearing for the parties.

2. The order of detention under Section 3(3) of the National Security Act, 1980 (hereinafter referred to as `the Act') was passed by the Commissioner of Police, Greater Chennai on 16.12.2006 and the same was executed on 18.12.2006. The detention order indicates that such order was passed with a view to preventing the detenu Jaishankar from acting in any

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manner prejudicial to the maintenance of public order. The grounds of detention dated 16.12.2006 were served on 20.12.2006. Such grounds indicate that the detenu and two other persons, namely, Tvl.Thanga Muthu.Krishnan and Ganapathi Ravi who belong to Hindu Makkal Katchi and Siva Sena political party were standing at the entrance of the Government Estate surrounded by about 25 members of public. Two persons, namely, Tvl.Srinivasan and Dayalan were proceeding in the opposite direction. Thiru Thanga.Muthukrishnan came out of the crowd and caught hold of the hand of Thiru Srinivasan by saying,

"நீங்கள் இருவரும் நில்லுங்கள், நான் சொல்வதை கேளுங்கள், இந்த நோட்டீஸை படியுங்கள்."

(Both of you wait. Listen my words. Read this notice-English translation)

and also handed over pamphlets to both Tvl.Srinivasan and Dayalan. It is further stated that Tvl.Thanga.Muthukrishnan and Ganapathy Ravi issued such pamphlets also to others who are at the spot. It is further stated that the detenu addressed the gathering by saying,

"ஸ்ரீரங்கத்தில் அரங்கநாதர் கோயில் முன்பு, பெரியார் சிலையை வைத்துள்ளார்கள். இதே போல் திராவிடர் கழகம் கட்சியினர் தமிழ்நாட்டில் எங்காவது ஒரு மசூதி அல்லது கிருஸ்துவ சர்ச் முன்பு, பெரியார் சிலையை வைக்க முடியுமா, அப்படி ஒரு சிலையை தி.க.காரன் வெச்சான்னா அந்த முஸ்லிம்களும், கிருஸ்துவர்களும் சேர்ந்து தமிழ்நாட்டில் உள்ள அத்தனை பெரியார் சிலைகளையும் அடித்து உடைத்து விடுவார்கள்.ஞ தி.க. கட்சிகாரர்களையும் வெட்டி கொலை செய்து விடுவார்கள்"

(Further Thiru Jaishankar addressed the gathering by saying "Periyar statue was installed in front of Srirangam Ranganathar Temple. Like this can the Dravidar Kazhagam install Periyar statue either in front of a Mosque or a Church; if such a statue was installed by D.K.activists, that Muslims and Christians joined together would break and destroy all the Periyar statue in Tamil Nadu and would also murder all the D.K.activists."-English translation) He further warned the State Government by saying,

"வருகிற 16ம் தேதி ஸ்ரீரங்கத்தில் வீரமணி தலைமையில் தி.க.மாநாடு நடத்துவதற்கு அரசு அனுமதி கொடுக்க கூடாது. அனுமதி கொடுத்தால் நாம் எல்லோரும் அங்கு திரண்டு சென்று கலவரத்தில் ஈடுபட்டு இஸ்லாமியர்கள் உறஞ் யாத்திரையின் போது மெக்காவில் உள்ள சாத்தான் மீது எப்படி கல் எறிகிறார்களோ, சுபரிமலை ஐயப்பன் கோவிலுக்கு செல்லும்போது இந்துக்கள் எப்படி சரங்குத்தியில் உள்ள சாத்தான் மீது கல் எறிகிறார்களோ அதே போல் நாமும் ஸ்ரீரங்கத்தில் உள்ள பெரியார் சிலை மீது கல்லெறிந்து அந்த சிலையை உடைத்து நொறுக்க வேண்டும்,"

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(He further warned the State Government by saying "The Government should not give permission to the Dravidar Kazhagam headed by Veeramani to hold conference on the coming 16th at Srirangam. If permission is granted we all should assemble there and indulge in violence and like Muslims throw stones at Sathan at Mecca during Huj pilgrimage and has Sabarimala devotees throw stones at Sathan in Sarankuthi (on the way to Sabarimala), we should throw stones at Periyar statue and that statue should be destroyed.-English translation).

Thereafter, Thiru Srinivasan lodged a complaint at D7, Government Estate Police Station, Chennai City against the detenu, Thanga.Muthukrishnan and Ganapathi Ravi enclosing the pamphlets requesting the police to take action. The Inspector of Police, D7, Government Estate police station registered Cr.No.120/2006 u/s 341, 153(A), 505(1)(b) and (c) and 505(2) IPC and the Inspector of Police seized the pamphlets produced by the said Thiru Srinivasan and investigation was taken up by the Assistant Commissioner of Police. The Assistant Commissioner visited the spot and prepared rough sketch and observation mahazar and examined witnesses and recorded their statements. The detenu was arrested on 11.12.2006 at 20.45 hours at Central Railway Station, Chennai and was examined. His confessional statement was recorded. At the time of arrest it was also found that the detenu was in possession of 10 sets of such pamphlets which was seized under cover of Mahazar. Further interrogation revealed that subsequent to the damage of the Periyar statue at Srirangam in front of the Sri Aranganathar temple, the detenu prepared pamphlets instigating the general public to indulge in acts of violence and stated,

"திராவிடர் கழகம் கட்சியினர் தமிழ்நாட்டில் எங்காவது ஒரு மசூதி அல்லது கிருஸ்துவ சர்ச் முன்பு, பெரியார் சிலையை வைக்க முடியுமா, அப்படி ஒரு சிலையை திக.காரன் வெச்சான்னா அந்த முஸ்லிம்களும், கிருஸ்துவர்களும் சேர்ந்து தமிழ்நாட்டில் உள்ள அத்தனை பெரியார் சிலைகளையும் அடித்து உடைத்து விடுவார்கள். திக. கட்சிகாரர்களையும் வெட்டி கொலை செய்து விடுவார்கள் "

(can the Dravidar Kazhagam install Periyar statue either in front of a Mosque or a Church; if such a statue was installed by D.K.activists, that Muslims and Christians joined together would break and destroy all the Periyar statue in Tamil Nadu and would also murder all the D.K.activists.-English translation)

and the detenu deliberately issued provocative statement with intention to create clashes between Dravida Kazhagam who are the non-believers of god and the Hindu believers in God and also to promote enmity between religion groups namely Hindus and Muslims and Hindus and Christians and to create chaos and confusion in the State and thereby acted in a manner prejudicial to the maintenance of public order.

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The grounds of detention further disclose the detenu also conducted press meet at the Press Club at Government Estate on 11.12.2006, released pamphlets and distributed press note to the press personnel and asked them to give wide publicity. The press note contains the following:

"1. பெரியார் சிலையை வைக்க அனுமதி அளித்த தமிழக முதல்வர் ஒரு குற்றவாளி.
2. சிலையை வைக்க இடைக்கால தடை வழங்காத நீதிமன்றம் ஒரு குற்றவாளி.
3. சர்ச் மற்றும் மசூதி முன்ப, பெரியார் சிலையை வைக்கத் தயாரா என மதங்களுக்குள் சண்டையை மூட்டி விட்டு அதன் மூலம் தமிழகத்தில் குழப்பத்தினை உண்டாக்குதல்."

(1.The Chief Minister is an accused because he permitted to install the Periyar statue.
2.The court also accused because it did not grant interim injunction against installation.
3.Creating confusion in Tamil Nadu by inciting clash between religions by asking whether the status could be installed in front of Church and Mosque.-English translation)

It is further recited thus the detenu had deliberately issued the statement solely with intention to disturb the public peace and communal harmony in the peaceful State. Further in the press note, he went to the extent of criticizing the judicial system and accused the Hon'ble Court since the Hon'ble Court had not granted stay for the unveiling of the statue of Periyar at Srirangam. In paragraph 3 of the grounds of detention it is further stated as under:

"3.Hence I am satisfied that Tr.Jaishankar issued objectionable notices and conducted press conference and further addressed the gathering and induced them to indulge in acts of violence among the Religions and tried to disturb communal harmony and to create communial clash leading to the disturbance of public tranquility and thereby affecting the maintenance of public order in the State. Further a reading of the pamphlets reveals that " திராவிடர் கழகம் கட்சியினர் தமிழ்நாட்டில் எங்காவது ஒரு மசூதி அல்லது கிருஸ்துவ சர்ச் முன்ப, பெரியார் சிலையை வைக்க முடியுமா, அப்படி ஒரு சிலையை தி.க.காரன் வெச்சான்னா அந்த முஸ்லிம்களும், கிருஸ்துவர்களும் சேர்ந்து தமிழ்நாட்டில் உள்ள அத்தனை பெரியார் சிலைகளையும் அடித்து உடைத்து விடுவார்கள். தி.க. கட்சிகாரர்களையும் வெட்டி கொலை செய்து விடுவார்கள்

(Further a reading of the pamphlets reveals that can the Dravidar Kazhagam install Periyar statue either in front of a Mosque or a Church; if such a statue was installed by D.K.activists, that Muslims and Christians joined together would break and destroy all the Periyar statue in Tamil Nadu and would also murder all the D.K.activists'-English translation)

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and this will encourage the innocent public to indulge in acts of violence.

Further he uttered the words

"வருகிற 16ம் தேதி ஸ்ரீரங்கத்தில் வீரமணி தலைமையில் தி.க.மாநாடு நடத்துவதற்கு அரசு அனுமதி கொடுக்க கூடாது. அனுமதி கொடுத்தால் நாம் எல்லோரும் அங்கு திரண்டு சென்று கலவரத்தில் ஈடுபட்டு இஸ்லாமியர்கள் உறஜ் யாத்திரையின் போது மெக்காவில் உள்ள சாத்தான் மீது எப்படி கல் எறிகிறார்களோ, சுபரிமலை ஐயப்பன் கோவிலுக்கு செல்லும் போது இந்துக்கள் எப்படி சரங்குத்தியில் உள்ள சாத்தான் மீது கல் எறிகிறார்களோ அதே போல் நாமும் ஸ்ரீரங்கத்தில் உள்ள பெரியார் சிலை மீது கல்லெறிந்து அந்த சிலையை உடைத்து நொறுக்க வேண்டும்."

(Further he uttered the words "the Government should not give permission to the Dravidar Kazhagam headed by Veeramani to hold conference on the coming 16th at Srirangam. If permission is granted we all should assemble there and indulge in violence and like Muslims throw stones at Sathan at Mecca during Huj pilgrimage and has sabarimala devotees throw stones at Sathan in Sarankuthi (on the way to Sabarimala), we should throw stones at Periyar statue and that statue should be destroyed.-English translation)

(Translated version as indicated in this order is furnished by the learned counsel for the petitioner.)

3. It appears that before the order of detention was passed, the wife of the detenu addressed a letter dated 14.12.2006 to the Commissioner of Police, the detaining authority and the same is extracted hereunder:

"Respected Sir,

My husband G.S.Jaishankar, was arrested at Chennai. I came to know about this proposed bitten him under NSA. This information I came to only through media report. So for I was not communicated of the arrested my husband. The allegation against him ANE false and politically motivated. Signly withdrawn the case against him.

Yours sincerely
sd/-14.12.06
(J.GEETHA)"

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(counsel now expresses that the word 'bitten' was a typographical mistake and the correct word was `to detain'.)

It is not in dispute that such letter was received by the Commissioner on 18.12.2006 by which date the order of detention had already been signed. However, the detention order was served and executed on 18.12.2006. It appears that on 23.12.2006 the present petitioner who is the wife of the detenu sent a representation to the State Government as well as to the Commissioner praying for revocation of the order of detention. It further appears that the detenu himself sent a representation dated 23.12.2006 through the Superintendent of Police, Central Prison, Chennai addressed to the Commissioner of Police. The English translation of such document has been filed as part of the additional typed set of papers by the petitioner. Such representation by the detenu is extracted in extenso hereunder.

"From 23.12.2006
S.Jaishankar
Preventive Detenue(NSA)
Central Prison, Puzhal
Chennai.

Thru'
The Superintendent
Central Prison
Chennai

To
The Commissioner of Police
Chennai City
Egmore,Chennai
Vanakkam

I came to know at 2.30 p.m. on 18.12.2006 about my detention under NSA vide your order dated 16.12.2006.

I want to make a detailed representation to set aside the detention order, for which I need the following documents:

1. It was stated that pamphlet was circulated on 11.12.2006, which contained "can the Dravidar Kazhagam Activists install Periyar Statue in front of either Mosque or Church in Tamil Nadu". If Dravidar Kazhagam activists install a statue, the Muslims and Christians will join together and would break and destroy all the Periyar statutes in Tamil Nadu. Further, they would cut and murder the Dravidar Kazhagam people. The aforesaid pamphlet was not supplied to me in the booklet furnished to me.

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Therefore, I may be given the copy of the aforesaid pamphlet.

2. Other than the aforesaid pamphlet I may also be given a copy of the press statement, which was said to have been released in the press conference, which was addressed by me.

3. It was also stated that a confession statement has been obtained from me. Give me the copy of the said confession statement of me.

4. While I was produced before the XIII Metropolitan Magistrate, Egmore, I had said that "I was arrested in the press conference". The Magistrate had made note of that and obtained my signature. Give me the copy of the order, which contained the endorsement of the Learned Magistrate.

4A. Copy of the representation of my wife dated 14.12.2006, which was sent by my wife.

5. Pursuant to my arrest on 11.12.2006 a press statement was issued by the Commissioner of Police and the Director General of Police on the same night wherein it was stated that "I am going to be detained in NSA". I may be given a copy of the press statement issued through the Police Department on 11.12.2006.

6. It was stated that my bail application is pending before the XIII Metropolitan Magistrate and the same court had granted bail in similar cases, there is a possibility that I would be granted bail hence, the detention is necessary. Therefore, furnish the copies of the orders that were granted by the said court in similar matters in the last one year.

7. Few witnesses (Nandakumar, Azad, Mohan and Arumugham) have given statement that was furnished in the booklet. It contained that they came to know by reading the newspapers that "I addressed to the press conference that news has appeared in news papers and by such an news I have incited violence among Hindus, Christians and Muslims and created fear and attempted to create communal violence in the State by which attempted to de-establish the State and with intention of creating communal violence by which everyone would attack each other". Therefore, furnish me the copies of the newspapers that were said to have published my press conference, which had the tenor of creating violence.

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The above said documents may kindly be furnish immediately either to me or to my wife.

Yours sincerely,
sd/-
S.Jaishankar."

4. On 26.12.2006 the Government issued an order approving the order of detention and subsequently on the basis of the recommendation of the Advisory Board, the order of detention was confirmed by the State by order dated 2.3.2007. The post-detention representation sent by the wife of the detenu was rejected by the Government on 5.1.2007. The pre-detention representation made by the wife of the detenu which had already been extracted in extenso was replied to by the Commissioner of Police on 30.12.2006. The reply is extracted hereunder:

"That the detenue was detained under preventive detention to prevent him from indulging into activities that are prejudicial to the maintenance of public order.

Your wife Mrs.Geetha was informed about your arrest by way of telegram on 11.12.2006 itself and by 18.12.2006 registered letter she was also communicated about your preventive detention."

A representation dated 23.12.2006 made by the detenu himself which has already been extracted seeking for several documents was replied to by the State Government on 14.2.2007. The English translation of such document is available as part of the additional typed set. The entire reply dated 14.2.2007 is extracted hereunder:

"The representation dated 27.12.2006 addressed to the Commissioner of Police, sent thru' the Superintendent, Central Prison, Chennai to make representation against the detention order made under National Security Act, 1980 was carefully considered by the Government. Since the representation was not acceptable, I hereby inform you that the said representation is rejected by the Government.

2.Pamphlet, Confession Statement and Remand Order are already furnished to you in page numbers 5 to 6, 44 and 56 to 57 respectively in the paper book supplied to you. I further inform you that the Inspector of Police has not given any press statement with regard to your arrest on 11.12.2006.

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3.All the documents that were relied upon for the detention, had already been furnished to you. Therefore, I inform you that there is no necessity to furnish documents to you."

5. In the abovesaid factual matrix, the learned counsel for the petitioner has raised the following contentions:

(i)The detaining authority has mechanically passed the order of detention without application of mind inasmuch as the detaining authority has not gone through the so called press note relied upon in internal page 3 of the grounds of detention. Similarly, the detaining authority has not gone through the so called pamphlet relied upon in paragraph 3 of the grounds of detention.

(ii)Even assuming that the detaining authority has gone through any such materials, the protection guaranteed under Article 22(5) has not been complied with inasmuch as the copy of the press note and the pamphlet available in the booklet furnished to the detenu did not contain the recital to the following effect.

"1.The Chief Minister is an accused because he permitted to install the Periyar statue.

2.The court also accused because it did not grant interim injunction against installation.

3.Creating confusion in Tamil Nadu by inciting clash between religions by asking whether the statue could be installed in front of Church and Mosque."

(iii)Even though the detenu had made a specific request for furnishing such press note which contains the recited portion (in page No.3 and the pamphlets which contain the portion recited in page 4 paragraph 3 of the grounds of detention which have already been extracted) were not furnished to the detenu and a mechanical reply was given and that too after a long lapse of time on 2.3.2007 stating that all the documents had been furnished. By the above process the detenu was deprived of an opportunity of making effective representation.

(iv)The representation sent by the wife of the detenu before passing of the order of detention was also not considered by application of mind and on the other hand, a mechanical reply was given by the detaining authority.

(v)The order of detention has been passed in a pre-determined manner inasmuch as on 11.12.2006 itself even before there was any proposal by the sponsoring authority for passing any order of detention, the detaining authority herself has issued a press release which appeared in all the newspapers on 12.12.2006 indicating that it had already been decided to

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detain the detenu under the National Security Act which would indicate that the detaining authority has proceeded in a pre-determined manner.

6. In the counter affidavit filed, nothing is indicated about the existence of the press note which was purportedly relied upon by the detaining authority as apparent from recital in page 3 of the grounds of detention. The extracted portions specifically indicate that the detaining authority had relied upon the fact that the press note had contained several statements which have been extracted. But, it now transpires no such press note was available before the detaining authority. This would indicate non-application of mind on the part of the detaining authority. Similarly, the further recital in paragraph 3 of the grounds of detention to the following effect.

> "Further a reading of the pamphlets reveals that " can the Dravidar Kazhagam install Periyar statue either in front of a Mosque or a Church; if such a statue was installed by D.K.activists, that Muslims and Christians joined together would break and destroy all the Periyar statue in Tamil Nadu and would also murder all the D.K.activists."

also appears to be based on non-existent material as now it is conceded by the learned counsel for the State that the pamphlets so available at pages 5 and 6 of the booklet do not contain such extracted portion. Those materials were not before the detaining authority and yet the detaining authority has purported to rely upon such materials. This would indicate non-application of mind to the materials on record. On the other hand, if such materials were there and had been relied upon, as required under Article 22(5) the detaining authority should have furnished the copies of such materials to enable the detenu to make a representation. In either case the order of detention can be stated to be vitiated either because there is non-application of mind or there is no compliance with the requirement of Constitution under Article 22(5).

7. In this context it is also to be noticed that the detenu himself had made a specific representation on 23.12.2006 which apparently was received on 27.12.2006 wherein the detenu had specifically requested the authorities to furnish the copies of the press note relied upon in page 3 of the grounds of detention and the pamphlets containing the extracted portions which had been specifically relied upon in paragraph 3 in page 4 of the grounds of detention. Such representation was simply rejected by saying that the copies of the documents were furnished and the copies of the documents were available at pages 5 and 6 of the booklet already served on the detenue.

8. We have repeatedly called upon the learned Additional Public Prosecutor to point out from pages 5 and 6 regarding such recital in paragraph 3 of the grounds of detention which have been extracted in earlier part of paragraph 3 of the grounds of detention. But, the learned

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Additional Public Prosecutor has stated that though the said extracted portion was not available in the pamphlets at pages 5 and 6 of the booklet, such recital is available in the complaint made by Thiru Srinivasan and 161 statement which are available in the booklet. This explanation given for the first time was not reflected in the reply to the representation dated 23.12.2006 received on 27.12.2006 nor a whisper has been made in the counter affidavit filed by the respondent No.2

9. We are afraid that such belated explanation furnished in course of hearing of this petition cannot come to the help of the State. It is apparent while passing the detention order the detaining authority has simply extracted some materials from here and there without understanding the background of such statement which would obviously indicate the non-application of mind on the part of the detaining authority.

10. The order of preventive detention has the effect of curtailing the liberty of a citizen of India and therefore, the authorities vested with such wide powers are required to bestow careful attention to the relevant materials on record and it is not expected that such an order would be passed in a cavalier fashion without properly referring to the relevant materials. In our opinion, the order of detention is vitiated on account of such non-application of mind and further by the fact when a specific representation was made, a clear position was not indicated to the detenu. When a representation was made seeking for those documents, atleast the authorities should have explained the matter by saying that there was no such pamphlets containing the extracted words nor there was any such press note containing such expression and such materials were available in the statement of some other witnesses.

11. Apart from the above, the fact that the representation of the detenu seeking for such some documents for the purpose of making a representation has remained pending till 2.3.2007, that is to say, for a period of more than two months itself is shocking. If such documents were not available the authorities should have given a reply much earlier so that the detenu could have pursued his remedies or could have made another representation. By keeping silent on the request made by the detenu regarding furnishing of some documents which on the face of it appeared to be quite relevant itself has the effect of vitiating the order of detention inasmuch as the detenu is not afforded the earliest opportunity of making representation as contemplated in Article 22 of the Constitution of India.

12. It is also contended that the order of detention has been passed by the Commissioner of Police in a pre-determined manner without independent application of mind. The learned counsel for the petitioner submitted that in paragraph 5 of the representation dated 23.12.2006 received on 27.12.2006 it had been specifically stated

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"5.Pursuant to my arrest on 11.12.2006 a press statement was issued by the Commissioner of Police and the Director General of Police on the same night wherein it was stated that "I am going to be detained in NSA". I may be given a copy of the press statement issued through the Police Department on 11.12.2006."

13. In course of hearing of this matter we have pointedly asked the learned Additional Public Prosecutor as to whether such a press statement has been issued through Police Department on 11.12.2006 and the learned Additional Public Prosecutor was constrained to admit the fact that such a press statement was issued through Police Department. Further, it is surprising to note that in the reply to such representation it has been indicated,

"I further inform you that the Inspector of Police has not given any press statement with regard to your arrest on 11.12.2006."

This only indicates that the authority who replied was either very clever or naive. In the representation, the detenu had specifically made a request about press statement of the Director General of Police and the Commissioner of Police (Commissioner of Police is the detaining authority). The detenu wanted a copy of the press statement. The reply indicates as if no such press statement has been made by the Inspector of Police, but the reply is completely silent about the press statement made by the Commissioner and no reason is given as to why such copy could not be made available to the detenu. Since the issuance of such press statement is no longer in dispute, as the learned Additional Public Prosecutor has been constrained to admit that such press statement was issued on 11.12.2006 which appeared in newspapers on 12.12.2006, it is apparent that the order of detention dated 16.12.2007 is an outcome of the pre-determined opinion of the Police Department and not on the basis of independent assessment of factual scenario. It is no doubt true that the detaining authority has passed the order on the basis of subjective satisfaction. But that does not mean that the detaining authority should not have an open mind and he should proceed in a pre-determined manner. In the background of materials indicating non-application of mind which we have already referred to, this aspect also assumes more significance.

14. Apart from the above, it is not disputed that a communication was sent by the wife of the detenu on 14.12.2006 which was received admittedly on 18.12.2006. The reply which had already been extracted simply indicates about the fact that the arrest of the detenu had been communicated. However, nothing is indicated about the other aspects highlighted in such letter. It is no doubt true that such representation was received after the order of detention had been made on 16.12.2006 in which event, the detaining authority should have considered

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such representation for the purpose of examining as to whether the order of detention is to be revoked by the detaining authority himself which is contemplated in the statutory provision. It is well known that before the approval from the State Government the detaining authority himself has the jurisdiction to revoke the order of detention. In the letter written by the wife of the detenu it had been indicated that the detenu had been falsely implicated. The detaining authority should have considered such matter. Even assuming that the detaining authority could not consider such matter before the order of approval by the Government it was the duty of the detaining authority to place such matters before the State Government so that before the approval or at any rate, before the confirmation of the order, the State Government would have had the liberty of going through such pre-detention representation. This would also have the effect of vitiating the order of detention as has been held in several decisions of this Court.

15. Apart from the above, the learned counsel for the petitioner also contended there are several contradictions appearing in the recitals of the grounds of detention and there was no necessity for passing order of detention. However, since we are quashing the order of detention it is not necessary to deal with such contentions.

16. The Habeas Corpus Petition is allowed. Impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sal

To

1.The Secretary
Public (Law & Order-G)Department
Secretariat, Chennai 600 009

2.The Commissioner of Police
Greater Chennai
Egmore, Chennai 600 006

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3. The Superintendent,
Central Prison, Chennai.

4. The Joint Secretary to Government,
Public (Law and Order)
Fort St.George, Chennai - 9.

5. The Public Prosecutor,
High Court, Madras.

1 cc To Mr.Su. Srinivasan, Advocate, SR.26072.

H.C.P.No.110/2007

PV(CO)
RVL 13.06.2007

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